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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/552,065 | 10/05/2005 | Kai Schiemann | MERCK-3074 | 6546 |
| 23599 7590 04/13/2010 MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201 | | | | |
| EXAMINER STONE, CHRISTOPHER R | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1628 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
| 04/13/2010 | | ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mwzb.com

Office Action Summary

Application No.

10/552,065

Applicant(s)

SCHIEMANN ET AL.

Examiner

CHRISTOPHER R. STONE

Art Unit

1628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-24 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 11, 12, 14-22 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 9, 13 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

Applicants' arguments, filed January 14, 2010, have been fully considered but are moot in view of new grounds of rejection. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Status of Claims

Claims 1-9 and 11-24 are pending. Claims 4, 12, 15, 16 and 19-21 are withdrawn from further consideration as being drawn to a nonelected invention. The elected specie of compound, 1-[1-(4'-Fluoro-biphenyl-4-yl)-5-(2-fluoro-phenyl)-1H-pyrazol-4-ylmethyl]-4-methyl-piperazine (see Response to Restriction Requirement, filed August 7, 2008, p. 1) is found to be allowable. The examination has been the compound of formula I, wherein X is CH, R¹ is H, R² is (CH₂)_nAr, wherein n is 0 and Ar is phenyl, R³ is H and R⁴ is (CH₂)_nN(R⁵)₂, wherein n is 4, R⁵ is A and A is methyl. Thus claims 5-7, 11, 14, 17, 18, 22 and 24 are withdrawn as being drawn to a non-elected species. Claims 1-3, 8, 9, 13 and 23 are currently under examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 8, 9, 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selwood et al (WO 00/27394).

Selwood et al teaches 1,5-diphenyl-3-(3-dimethylaminopropoxy)-1H-pyrazole (p. 84, line 32) as a compound with soluble guanylate cyclase activation activity useful as a vasodilator and/or a platelet aggregation inhibitor in the treatment of various diseases and conditions (abstract). 1,5-diphenyl-3-(3-dimethylaminopropoxy)-1H-pyrazole differs from the compound currently under examination (i.e. the compound of formula I, wherein X is CH, R¹ is H, R² is (CH₂)_nAr, wherein n is 0 and Ar is phenyl, R³ is H and R⁴ is (CH₂)_nN(R⁵)₂, wherein n is 4, R⁵ is A and A is methyl) in that a CH₂ group of variable group R⁴ is replaced by an oxygen atom; However Selwood et al teaches that said oxygen atom may be replaced by CH₂ (p. 2, formula I(a), variable Y) resulting in compounds with the pharmacological activity discussed above. Therefore it would have been prima facie obvious to make such a modification to 1,5-diphenyl-3-(3-dimethylaminopropoxy)-1H-pyrazole, since Selwood et al teaches that such a

modification results in a compound with activity useful as a vasodilator and/or a platelet aggregation inhibitor in the treatment of various diseases and conditions, thus resulting in the instantly claimed compound with a reasonable expectation of success. With regard to the wherein clauses of claims 2 and 3, specifying that said compound has serotonin receptor antagonist activity, the language of said clauses does not further structurally limit the instantly claimed compound and is thus non-limiting.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER R. STONE whose telephone number is (571)270-3494. The examiner can normally be reached on Monday-Thursday, 7:30am-4:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CRS

/Brandon J Fetterolf/
Primary Examiner, Art Unit 1642